

(Additional counsel on following page)

JESSICA R. PERRY (SBN 209321)
jerry@orrick.com
MELINDA S. RIECHERT (SBN 65504)
mrieghert@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025-1015
Telephone: +1 650 614 7400
Facsimile: +1 650 614 7401

KATHRYN G. MANTOAN (SBN 239649)
kmantoan@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
Telephone: +1 415 773 5700
Facsimile: +1 415 773 5759

Attorneys for Defendant
Apple Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ASHLEY GJOVIK,
Plaintiff,
v.
APPLE INC.,
Defendant

Case No. 23-cv-4597-EMC

**DEFENDANT APPLE INC.'S REPLY IN
SUPPORT OF ITS REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
ITS MOTION TO DISMISS PORTIONS
OF THE FIFTH AMENDED
COMPLAINT AND RESPONSE TO
PLAINTIFF'S UNTIMELY REQUESTS
FOR JUDICIAL NOTICE IN SUPPORT
OF HER OPPOSITION**

Dept: Courtroom 5, 17th Floor
Judge: Honorable Edward M. Chen
Date: February 21, 2025
Time: 9:00 a.m.

1 KATE E. JUVINALL (SBN 315659)
2 kjuvinall@orrick.com
3 ORRICK, HERRINGTON & SUTCLIFFE LLP
4 631 Wilshire Blvd., Suite 2-C
5 Santa Monica, CA 90401
6 Telephone: +1 310 633 2800
7 Facsimile: +1 310 633 2849

8 RYAN D. BOOMS (SBN 329430)
9 rbooms@orrick.com
10 ORRICK, HERRINGTON & SUTCLIFFE LLP
11 2100 Pennsylvania Avenue NW
12 Washington, D.C. 20037
13 Telephone: +1 202 339 8400
14 Facsimile: +1 202 339 8500

15 Attorneys for Defendant
16 Apple Inc.

17
18
19
20
21
22
23
24
25
26
27
28

1 On January 7, 2025, Apple accompanied its Motion to Dismiss Portions of the Fifth
 2 Amended Complaint with a Request for Judicial Notice (Dkt. 146; “Apple’s 5AC MTD RJD”).
 3 Plaintiff filed an opposition to the Motion to Dismiss on January 22, 2025, one day late and eleven
 4 pages over the limit; she did not file any opposition to Apple’s 5AC MTD RJD at that time. Apple
 5 replied in support of the Motion to Dismiss on January 28, 2025, at which point the Motion to
 6 Dismiss was fully briefed.

7 On January 31, 2025—ten days past the deadline to do so—Plaintiff filed:

- 8 (1) A request for judicial notice in support of the portions of her Opposition to the Motion
 9 to Dismiss concerning her Labor Code section 232 claim, totaling 27 pages (Dkt. 154);
- 10 (2) A separate request for judicial notice in support of the portions of her Opposition to the
 11 Motion to Dismiss concerning her claims for penalties under Labor Code sections
 12 1102.5 and 98.6/98.7, totaling 44 pages (Dkt. 154-1); and
- 13 (3) A document entitled “Plaintiff’s Request for Judicial Notice & Opposition to
 14 Defendants’ [sic] Request for Judicial Notice” concerning her nuisance and IED claims,
 15 totaling 13 pages (Dkt. 154-2) (collectively, the 84-page “January 31 RJD
 16 Submission”).

17 These filings represent yet another attempt by Plaintiff to flout page limits and endlessly attempt to
 18 expand the scope of this case, and do nothing to change the fact that Apple’s 5AC MTD RJD should
 19 be granted.

20 As an initial matter, the Court should not reward Plaintiff’s end-run around the rules and
 21 should thus decline to consider the untimely January 31 RJD Submission. Plaintiff filed the January
 22 31 RJD Submission ten days after it would have been due (*see* Civ. L.R. 7-3(a)) and three days
 23 after briefing closed on the Motion to Dismiss, violating the applicable rules. *See* Civ. L.R. 7-3(d)
 24 (“Once a reply is filed, no additional memoranda, papers or letters may be filed without prior Court
 25 approval...”). This delay is prejudicial to Apple, as substantive briefing on the Motion to Dismiss
 26 is closed and thus Apple did not have an opportunity to address the relevance of these documents
 27 to the Motion in its reply. Because the January 31 RJD Submission is untimely, it should not be
 28 considered. *See Cedeno v. IndyMac Mortg. Servs.*, No. EDCV1101637CJCSPX, 2011 WL

1 13225099, at *1 (C.D. Cal. Nov. 23, 2011) (declining to consider objection to request for judicial
 2 notice filed nine days after the deadline); *Malasky v. Esposito*, No. 16-CV-04102-DMR, 2019 WL
 3 79032, at *4 (N.D. Cal. Jan. 2, 2019), *aff'd*, 781 F. App'x 643 (9th Cir. 2019) (declining to consider
 4 untimely requests for judicial notice filed one week after deadline for plaintiff's opposition to
 5 motion to dismiss); *Sheahan v. State Farm Gen. Ins. Co.*, 442 F. Supp. 3d 1178, 1196 (N.D. Cal.
 6 2020) (denying request for judicial notice because it was submitted after briefing on motion to
 7 dismiss closed).

8 Even if the Court were to consider it, however, nowhere in the January 31 RJN Submission
 9 does Plaintiff even attempt to argue that the documents for which Apple seeks judicial notice cannot
 10 be so noticed; because she does not contest Apple's arguments in favor of judicial notice, she
 11 effectively concedes them. *See In re Ford*, 483 F. Supp. 3d 838, 846 (C.D. Cal. 2020).

12 Instead, much of her filings consist of improper additional argument on the merits of
 13 Apple's Motion to Dismiss and the sufficiency of the Fifth Amended Complaint. Plaintiff should
 14 not be permitted to in effect file an unauthorized sur-reply regarding the Motion to Dismiss in the
 15 guise of an (untimely) opposition to Apple's request for judicial notice and (untimely) additional
 16 requests for judicial notice after briefing on the Motion to Dismiss had closed. *See In Re Violin*
 17 *Memory Sec. Litig.*, No. 13-CV-5486 YGR, 2014 WL 5525946, at *17 (N.D. Cal. Oct. 31, 2014)
 18 (striking substantive arguments made in opposition to defendants' request for judicial notice and
 19 explaining that “[t]he inclusion of such argument in a brief purporting to address only whether the
 20 Court should take judicial notice of certain documents is improper”); Dkt. 98 (denying previous
 21 motion by Plaintiff to file seventy page sur-reply “not targeted to any alleged new contention in
 22 Defendant's reply” and striking improper sur-reply from the record).¹

23 ///

24 ///

25 ///

26 ¹ Because Plaintiffs' substantive arguments are improper, Apple is not responding to them here.
 27 Should the Court believe additional briefing addressing the flurry of documents Plaintiff is
 28 attempting to add to the record and their impact on the Motion to Dismiss would be helpful,
 Apple will provide it on whatever timeline the Court orders.

1 For the foregoing reasons, the Court should grant Apple's 5AC MTD RJD in its entirety
2 and strike Plaintiff's untimely January 31 RJD Submission from the record.

3 Dated: February 7, 2025

4 ORRICK, HERRINGTON & SUTCLIFFE LLP

5 By: /s/ Melinda S. Riechert

6 MELINDA S. RIECHERT

7 Attorneys for Defendant, Apple Inc.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28